

JUL 02 2012

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Kleiman Construction, Inc. & Seedorff
Masonry, Inc.**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2012-WW-18**

**TO: Seedorff Masonry, Inc.
Robert Marsh, President
408 West Mission St.,
Strawberry Point, IA 52076**

**Kleiman Construction, Inc.
Thomas E. Kleiman, President
6205 Locust Road SW
Cedar Rapids, IA 52404**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Seedorff Masonry, Inc., (Seedorff), Kleiman Construction, Inc. (Kleiman) and the Iowa Department of Natural Resources (Department). Seedorff and Kleiman hereby agree to be jointly and severally liable for the payment of a penalty in the amount of \$500.00 and cease all illegal discharges to waters of the State.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Sue Miller
IDNR Field Office #1
9990 W Main St. Ste 4
Manchester, IA 52057
Ph: 563/927-2640

Legal Issues

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorizes the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. Kleiman was hired by the Cedar Rapids Community School District (the School District) as a general contractor for a HVAC project at Harding Middle School. Kleiman hired Seedorff as a subcontractor. The School District owns and operates Harding Middle School which is located in Section 3 T83N, R 7W, Linn County, Iowa. This property is locally known as 4801 Golf St NE Cedar Rapids, Iowa.

2. On February 22, 2012, Sue Miller, Environmental Specialist with the Department, was contacted by Matt Dunbar, of the School District. Mr. Dunbar informed her that an employee of Seedorff was washing down brick at Harding Middle School and while doing so he disposed of diluted hydrochloric acid via a storm drain. This storm drain leads to an unnamed creek that flows through Noelridge Park to McLeod Run and ultimately to the Cedar River. This stream is part of the City of Cedar Rapids' storm water collection system.

3. On February 22, 2012, at approximately 11:30 am Ms. Miller arrived on site to investigate. Once on site, she observed the creek at the point it flows through Noelridge Park. At this point no fish either alive or dead were observed. Ms. Miller then met with Mr. Dunbar, Mr. Allard of Kleiman, Mr. Klingmann and Mr. Johanns of Seedorff, and Tera Prucha, the City of Cedar Rapids Storm Water Coordinator. Ms. Prucha informed Ms. Miller that she tested the residue of the material that was disposed of in the storm drain and its pH was 2 standard units (s.u.). Then Ms. Prucha and Ms. Miller tested the water in the creek at the point of the discharge and found the pH to be between 4 and 5 s.u. The creek was also tested approximately 100 feet downstream and the pH was 6 s.u.

Mr. Klingmann and Mr. Johanns stated that following completion of a repair on an interior masonry wall they used a cup Vanatrol concentrate mixed with water at a ratio of approximately $\frac{1}{4}$ cup Vanatrol to 2 gallons water. This solution was applied to the wall with a brush, the excess dripped to the floor and was then cleaned up with a shop vacuum. Mr. Klingmann reported that he emptied the shop vacuum through a grate on the storm drain because he thought it was a sanitary sewer. The storm drain was marked with two decals which both state "don't pollute, flows to waterways."

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Ms. Miller instructed the School District to hire a contractor to flush the storm drain and pump the stream until the pH returned to a neutral range of 6-9 s.u. The School District hired Roto-Rooter to do this.

4. On May 30, 2012, in a letter to the Department Mark Guetzko CEO of Seedorff, informed the Department of the following: (1) That it was his understanding that approximately 12-16 ounces of Vanatrol was released to a water of the state; (2) Following the release on April 9, 2012, Seedorff conducted a "Toolbox Talk" on all Seedorff jobsites regarding the proper disposal of rinsewater from masonry cleaning operations; and (3) On May 5 and 12, 2012, Seedorff conducted training of its employees regarding proper disposal of rinsewater.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 455B.186 and 567 IAC 62.1 prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit issued by the Department. A permit had not been issued for the activity described above; therefore, the foregoing facts establish that this provision has been violated.
2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards. The Commission has done so at 567 IAC Chapters 60-65.
3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions. The above facts indicate a violation of one or more of these criteria.

V. ORDER

THEREFORE, the Department hereby orders and Seedorff and Kleiman consent to do the following:

1. Seedorff and Kleiman shall cease all illegal discharges to waters of the State; and
2. Seedorff and Kleiman shall be jointly and severally liable for the payment of a penalty in amount of \$500.00 to be paid within 30 days of the date the Director of the Department signs this Order.

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PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Seedorff and Kleiman saved time and money by failing to properly dispose of its waste. This benefit, however, is minimal and the Department has decided not to assess a penalty for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves actual impact to water quality. The violations threaten the integrity of the water quality program. For these reasons, \$250.00 is assessed for this factor.

c. Culpability. Through an application of the appropriate standard of care this violation could have been avoided. A pollutant was disposed of via a drain with markings which indicated that it drained directly to a stream. A reasonable person in a similar situation would have noticed that the markings on the drain indicated that it drained directly to the stream. Moreover, this violation could have been avoided if prior to engaging in the cleaning of masonry Seedorff and Kleiman had discussed how to properly dispose of pollutants. Therefore, \$250.00 is assessed for culpability.


VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Seedorff and Kleiman. By signature to this Order, all rights to appeal this Order are waived.

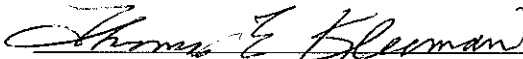
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VIII. NONCOMPLIANCE


Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


Robert Marsh, President
Seedorff Masonry, Inc.

Dated this 29 day of
June, 2012.


Thomas E. Kleiman, President
Kleiman Construction, Inc.

Dated this 5th day of
July, 2012.

 Bruce Troutman For
Chuck Gipp, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11 day of
July, 2012.

EPA, Field Office 1, Carrie Schoenebaum; Sue Miller, I. C 6 (a).